



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination:	[2022] IASC 103
Renewal of:	[2016] IASC 114
The Route:	Solomon Islands
The Applicant:	Virgin Australia International Airlines Pty Limited ABN 63 125 580 823 (Virgin Australia)
Public Register File:	IASC/APP/202202

The Commission makes a fresh determination allocating to Virgin Australia 360 seats per week in each direction on the Solomon Islands route, subject to certain conditions. The determination is valid for five years from 10 December 2022.

1 The application for renewal

1.1 On 19 December 2016, the International Air Services Commission (the Commission) issued Renewal Determination [2016] IASC 114 (the Determination) renewing the allocation of 360 seats of capacity per week in each direction on the Solomon Islands route in favour of Virgin Australia (SE Asia) Pty Ltd. The Determination was valid for five years from 10 December 2017. In 2018, the Determination was varied¹ to, among others:

- transfer the capacity allocation to Virgin Australia International Airlines Pty Limited (VAIA); and
- permit the capacity to be utilised by Tiger International Number1 Pty Ltd (Tiger International), as long as it remains a wholly-owned subsidiary of VAIA.

1.2 Section 17 of the *International Air Services Commission Act 1992* (the Act) requires the Commission to start its consideration of the renewal of a determination at least 12 months before the expiry of the original determination. The Determination is due to expire on 9 December 2022. In view of this, the Commission sent, on 10 December 2021, a letter to Virgin Australia inviting it to apply for renewal if it wished to renew the Determination.

1.3 On 13 January 2022, Virgin Australia applied to the Commission for a renewal of the Determination for a further five-year period from 10 December 2022, and also requested the retention of all relevant conditions. In its application, Virgin Australia

¹ Decisions [2018] IASC 226 and [2018] IASC 243

confirmed that Tiger International will not utilise the capacity on the Solomon Islands route.

1.4 As required by sections 12 and 17 of the Act, the Commission published, on 14 January 2022, a notice on its website and subsequently sent a notification by email to stakeholders inviting other applications on the route. No other applications or submissions were received.

1.5 All non-confidential material supplied by the applicant is available on the Commission's website (www.iasc.gov.au).

2 Air services arrangements

2.1 Under the Australia-Solomon Islands air services arrangements, Australian designated airlines may operate up to 2,000 seats per week of passenger capacity in each direction between Solomon Islands and the following points in Australia: Sydney, Melbourne, Brisbane and/or Perth. Virgin Australia has been allocated a total of 540 seats of capacity per week in each direction, leaving 1,460 seats of passenger capacity available for allocation.

2.2 Additionally, the designated airlines of Australia may determine the number of frequencies, capacity and aircraft type to be operated for freight services to and from points other than Sydney, Melbourne, Brisbane and/or Perth.

2.3 Under the terms of the Australia – Solomon Islands air services arrangements, any Australian designated airline can enter into code share, blocked space or other cooperative marketing arrangements, as the marketing and/or operating airline with any other airline including other designated Australian airlines and of third parties.

3 Commission's consideration

3.1 Section 8 of the Act provides that the Commission may, at any time while a determination is in force, make a fresh determination allocating the capacity to which the original determination relates. Subsection 8(2) provides in part that the fresh determination must make the same allocation of capacity as the original determination unless the Commission is satisfied that the allocation is no longer of benefit to the public. In assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out for that purpose in the policy statement made by the Minister under section 11 of the Act.

3.2 Pursuant to section 11 of the Act, the Minister issued the International Air Services Commission Policy Statement 2018 (the Policy Statement), which came into effect on 28 March 2018.

3.3 Section 14 of the Policy Statement applies where the Commission is proposing to make a fresh determination under section 8 of the Act, and is considering whether the allocation of capacity in the original determination is no longer of benefit to the public

for the purpose of paragraph 8(2)(a)(i) of the Act. Subsection 14(2) of the Policy Statement provides that, without limiting the matters to which the Commission may have regard, an allocation is generally no longer of benefit to the public if:

- the carrier has failed to service the route effectively [s 14(2)(a)]; and
- there are other applications for some or all of the capacity [s 14(2)(b)]; and
- the Commission is satisfied that a different allocation of capacity would be of greater benefit to the public, having regard to the criteria set out in sections 8 and 9 of the Policy Statement [s 14(2)(c)].

3.4 The Commission notes that, under subsection 14(2) of the Policy Statement, an allocation will generally no longer be of benefit to the public where all of the above conditions are satisfied.

3.5 There are no other applications for some or all of the capacity to which the determination in question relates, and therefore the condition in paragraph 14(2)(b) of the Policy Statement is not satisfied. The Commission therefore finds that the proposed allocation does not fall within the class of allocations that are generally no longer of benefit to the public contemplated by subsection 14(2) of the Policy Statement.

3.6 However, subsection 14(2) of the Policy Statement operates ‘without limiting the matters to which the Commission may have regard’. In view of the circumstances pertaining to the COVID-19 pandemic, the Commission has proceeded to consider whether the allocation is no longer of benefit to the public in all the circumstances.

3.7 On 11 March 2020, the World Health Organization declared the outbreak of COVID-19 (coronavirus) a pandemic. In response the Australian Government introduced a range of health, financial and other measures to minimise the number of people becoming infected or sick with COVID-19.

3.8 In this context, on 24 March 2020 the Prime Minister announced that the Government was introducing a ‘do not travel’ ban on Australians travelling overseas under the *Biosecurity Act 2015*. This ban was intended to limit travellers returning to Australia with coronavirus and to reduce the risks of spreading the coronavirus to other countries. The Prime Minister’s media statement indicated that the prohibition was aligned with the Government’s decision to raise the Smartraveller Travel Advice to Level 4 – “Do not go overseas. A travel ban is in place.” The Government lifted the international travel ban from 01 November 2021, subject to certain conditions.² From 21 February 2022, the Government re-opened the Australian international borders.³

3.9 Virgin Australia announced on 12 October 2021 that it will return to operate a limited network of international flights commencing from December 2021.⁴ In relation

² <https://www.pm.gov.au/media/interview-david-koch-and-natalie-barr-sunrise-0>

³ <https://www.pm.gov.au/media/reopening-tourists-and-other-international-travellers-secure-our-economic-recovery>

⁴ <https://www.virgin.com/about-virgin/latest/virgin-australia-to-return-to-international-flights>

to the Solomon Islands route, Virgin Australia informed the Commission that the airline's plans to re-start its Brisbane-Honiara service are contingent on the re-opening of borders by the Solomon Islands Government, the nature of quarantine requirements for travellers, and stabilisation of the threat of civil unrest in that country following on from the protests that occurred in November 2021. Virgin Australia indicated that together, these factors will have a significant impact on demand returning to the market and consequently, its ability to operate commercially viable services on the route.

3.10 In assessing the current Virgin Australia application for the renewal of its capacity allocation of 360 seats per week in each direction of passenger capacity on the Solomon Islands route, the Commission considered whether Virgin Australia has failed to service the route effectively.

3.11 Until travel restrictions linked to the COVID-19 pandemic were imposed by the Australian Government in March 2020, Virgin Australia was operating two services per week in each direction between Brisbane and Honiara. Prior to March 2020, there was no information to suggest that Virgin Australia has failed to service the Australia-Solomon Islands route effectively.

3.12 The Commission considers that the temporary suspension of Virgin Australia flights in 2020 to the present was in response to the COVID-19 travel restrictions and the civil unrest in that country (as per the Australian Government's travel advisory). The Commission therefore finds that the temporary suspension of Virgin Australia's services in these circumstances does not mean that it has failed to service the route effectively. Moreover, the Commission notes the information provided by Virgin Australia on a confidential basis in support of its renewal application on the Solomon Islands route.

3.13 The Commission has also considered the 'reasonable capability criterion' in section 8 of the Policy Statement, i.e. the extent to which all Australian carriers that are, or would be, permitted to use the capacity allocated under a determination are reasonably capable of: (a) obtaining any licences, permits or other approvals required to operate on and service the route to which the determination relates; and (b) using the capacity allocated under the determination.

3.14 The Commission notes that Virgin Australia is an established carrier which, under normal circumstances, operates scheduled international services on various routes and finds that the carrier is reasonably capable of obtaining the necessary regulatory approvals and of using the capacity allocated on the Australia-Solomon Islands route.

3.15 There is no other information before the Commission that it considers to be relevant or material to its assessment of Virgin Australia's application. Based on its findings above, the Commission is not satisfied that the allocation of capacity in the original determination is no longer of benefit to the public for the purposes of section 8(2)(a)(i) of the Act. Therefore, the Commission is required to make the same allocation of capacity as the original determination (see section 8(2)(a) of the Act).

3.16 The Commission will continue to monitor the utilisation of capacity by the Virgin Australia on this route.

3.17 Under section 19 of the Act, the Commission “must include the same terms and conditions as the original determination to which it relates” (s 19(1)(c)), but “may make such changes (if any) to the terms and conditions included in the original determination (including adding or deleting terms and conditions) as it is satisfied are warranted because of changes in circumstances since the original determination was made” [s 19(3)].

3.18 Pursuant to section 19 of the Act, the Commission has decided to include certain conditions as set out in item 4 below.

4 Determination allocating capacity on the Solomon Islands route to Virgin Australia International Airlines Pty Ltd ([2022] IASC 103)

4.1 In accordance with section 8 of the Act, the Commission makes a determination in favour of Virgin Australia International Airlines Pty Ltd allocating 360 seats per week in each direction on the Solomon Islands route in accordance with the Australia - Solomon Islands air services arrangements.

4.2 The determination is valid for five years from 10 December 2022.

4.3 The determination is subject to the following conditions:

- (a) Virgin Australia is required to fully utilise the capacity from the date this determination comes into effect or such other date as may be approved by the Commission.
- (b) Only Virgin Australia is permitted to utilise the capacity.
- (c) Virgin Australia is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person unless approved by the Commission.
- (d) Changes in relation to the ownership and control of Virgin Australia are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia — Solomon Islands air services arrangements being withdrawn; or

- has the effect that another Australian carrier, or a person (or group of persons) having substantial ownership or effective control of another Australian carrier, would take substantial ownership of Virgin Australia or be in a position to exercise effective control of Virgin Australia without the prior consent of the Commission.

Dated: 31 March 2022


GENEVIEVE BUTLER
Chairperson


JANE MCKEON
Commissioner